IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.389 OF 2002

IN

FIRST APPEAL NO.80 OF 2001.

Shapur N. Gharda : Appellant.

versus

Adi K. Dhondy & Anr. : Respondents.

And

Mrs.Mehroo Ganesh Udaywar : Applicant.

Ms.P.S.Cardozo for the applicant.

Mr.N.P.Pandit with Mr.Hemant Sethi for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 11th March 2005.

ORAL ORDER

1. This application is filed by the niece of deceased Shapur Gharda. Respondent is the nephew of the said Shapur Gharda. However, he is

opposing this application on the ground that the right to sue does not survive and, secondly, the suit, that has been dismissed, against which the appeal is filed, was filed by deceased Shapur Gharda in his personal capacity.

2. Criteria, to be applied, when application for being brought on record as legal heirs, is, whether the applicant represents the estate of deceased. Admittedly, apart from the suit property, the deceased has left other property with no other heirs excepting the respondent and the present applicant and as such she is a person representing the estate of the deceased. Therefore, this application is required to be allowed and it is allowed in terms of prayer clause (a). Amendment to be carried out within one week and, put up the matter for final hearing thereafter. Whether the applicant has any right and interest in the suit property will be independently decided at the time of final hearing of the appeal.

[D.G.DESHPANDE]

11/03/2005 JUDGE.